

**Draft Action/Summary Minutes  
City of Sedona  
Planning & Zoning Commission Meeting  
City Council Chambers, Sedona City Hall, Sedona, AZ  
Tuesday, January 4, 2011 - 5:30 p.m.**

**(15 minutes 5:30-5:45 for agenda items 1-4)**

- 1. Verification of Notice, Call to Order, Pledge of Allegiance and Roll Call**  
Chairman Gillon called the meeting to order at 5:30 p.m.

**Roll Call:**

**Planning & Zoning Commissioners:** Chairman Alex Gillon, Vice Chairman John Griffin and Commissioners Michael Hadley, Marty Losoff, Alain Soutenet and Norm Taylor.

**Staff:** Andy Dickey, Beth Escobar, Nick Gioello, Kathy Levin, John O'Brien, Donna Puckett, Mike Raber and Ron Ramsey

**Council Liaison:** Councilor Mike Ward

- 2. Commission/Staff announcements and summary of current events by Chairman/staff.**

John O'Brien announced that the Taco Bell has opened and the Commission will be looking at the Capital Improvement Program on February 1st or February 15th. Additionally, there are three applicants for two vacancies on the Commission and the City Clerk's office will be scheduling interviews within the next couple of weeks.

- 3. Approval of minutes for the following meeting: Thursday, December 2, 2010 (WS)**

**MOTION:** Commissioner Hadley moved to approve the minutes of the Planning & Zoning meeting for Thursday, December 2, 2010. Commissioner Losoff seconded the motion. **VOTE:** Motion carried six (6) for and zero (0) opposed.

- 4. Public Forum – for items not listed on the agenda within the jurisdiction of the Planning and Zoning Commission – limit of three minutes per presentation. (Note that the Commission may not discuss or make any decisions on any matter brought forward by a member of the public).**

*The Chairman opened the public forum.*

**Janice Litrell, Sedona, AZ:** Indicated that she wanted to comment on the Uptown public parking lot. She is a neighbor and worked closely with the City when they worked on it and she remembers the meetings fondly and the promises that were made. She is very impressed with the way the parking lot has been maintained and the crew continually keeps it in good shape. She is not impressed that there are gates that do not any longer stay locked, when the lot is not supposed to be in use. They have people coming at interesting hours, with some interesting happenings over the last several years, and she has called the Police a couple of times. There have been some interesting things after hours. The hours are posted, but the gates are not closed; the tire deals were removed and people are occasionally parking some RVs, as well as 24-hour parking there, so one of the issues regarding the use of the parking lot has been car alarms going off. She filled out a report one windy day and it was 24-hours of car alarms with many cars, and there is nothing stating anything about that. She inquired with the City, but didn't get an answer back. She talked with the Police and got an interesting comment about the Noise Ordinance and who is or is not to enforce that. They would like a little more cooperation, as they gave the City, regarding those issues and if she can help in some way, she will be glad to.

*The Chairman explained the concern will be passed to City staff and closed the public forum.*

5. **CONSIDERATION OF THE FOLLOWING REQUEST(S) THROUGH PUBLIC HEARING PROCEDURES: (90 minutes 5:45 – 7:15)**

- A. **Discussion/possible action regarding a request for a Conditional Use Permit for the Sedona Community Farmer's Market, an open air business proposed to be located at 3235 W SR 89A. The property totals approximately 1.00 acres and is zoned C-2 (General Commercial). The Market has an average of 35 vendors selling local produce and products and is proposing to operate one day a week on Sundays from 11:00 a.m. to 3:00 p.m. during the winter and summer seasons. The property is further identified as Assessor's Parcel Number: 408-11-086. Applicant: Sedona Community Farmer's Market. Case number: CUP2010-8**

**Presentation, Beth Escobar:** Indicated she had provided the Commission with some additional information, including a summary of some questions that Katrin Themlitz had from the Staff Report and some endorsements she received by email. Beth provided an overview of the request for the Conditional Use Permit as presented in the Staff Report and identified the proposed location and surrounding properties on a vicinity map. Additionally, an aerial view of the site was shown and Beth identified a small parcel that is a well site for the Arizona Water Company. She explained that they have a 20 ft. easement running from the right-of-way along the eastern property boundary to the site, and there is a 20 ft. ingress/egress easement that the property owner and adjacent property share to provide access to the adjacent parcel and to the back of Relics. Beth also identified the general area proposed for the Farmer's Market that leaves the back area plus four parking spaces available for market customers.

Beth explained that the applicant is proposing a seasonal Farmer's Market and the use of Relics one-day-a-week during the winter and summer seasons. She will use Relics on Thursday mornings or early evenings or Sunday early afternoons, and she will never have the market the same day as Tlaquepaque, but it is possible that she would have a Thursday event at one location and a Sunday event at another, depending on her vendors' ability to have produce available. Katrin also plans to set up 36 booths and has been operating since November under a Temporary Use Permit with 36 booths at Relics.

Beth indicated that booths are rented to vendors and taxes are collected on non-food items. Local growers are given preference when they have produce, but she has also built a strong network with growers in Southern Arizona. Katrin is also requesting two on-property banners and directional on-property signs for events and that the requirements in Section 1111 of the Land Development Code be waived.

Beth showed the site plan and pointed out the parking, how the tents would be set-up and an ADOT right-of-way that goes past the existing sidewalk, indicating that the Relics sign is a good indication of where the private property starts. Beth also explained the three ways to access the location, including the preferred access, two handicap parking spaces, and the access the applicant plans to close to control traffic once the vendors are set-up. Beth noted that Katrin is always on-site and usually has assistance on site to help direct traffic. Pictures of the market at Relics were shown, which showed that it is well attended. Beth indicated that there are 25 parking spaces on the site and 16 will be left in the back, and there is the additional parking available on the approximately two adjacent acres. Beth also pointed out that the venue is close to a transit stop, residential neighborhoods, and three motels are within walking distance.

Beth indicated that staff is recommending approval based on compliance with all ordinance requirements, with the exception of Section 1111 of the Land Development Code regarding signs, and the attached Conditions of Approval. Beth also noted that it was only yesterday that Katrin began discussing the Thursday evening venue, so the Commission hadn't heard that in the introduction, and from staff's perspective, there is a little more concern with Thursday evenings than with Sunday afternoons regarding traffic, plus Relics would be open on Thursday evenings, but the applicant will talk about those concerns.

Beth reminded the Commission that staff is proposing some extensive Conditions of Approval, including that she will notify the Sedona Police Department for every venue and for #13. If any traffic or parking issues arise, they have to be addressed immediately or the CUP will be put on hold until they are addressed, and if there are issues, we can get that input easily from staff on a weekday or from the Police Department on the weekends.

**Commission's Questions for Staff:**

Chairman Gillon asked if the CUP is for a specific day or time and Beth repeated that the applicant is asking for Thursdays mornings, Thursday evenings or Sundays, and typically we do make it that specific. With Tlaquepaque, the Commission gave her specific days and she had specific days at the airport. The Chairman indicated that it seems that we are pretty flexible about which days, so an alternative would be to say it could be X number of days a week, and then if she wants to change, we wouldn't have to re-debate this. Beth explained that is included in the Conditions; it is only one day, so it may not need to be changed. The Chairman commented, unless it is stipulated in the proposed CUP.

Commissioner Hadley indicated he is in support of the project, but has a concern about Relics being open at the same time and how that might impact the parking. In the original proposal, the restaurant wouldn't have been open. The Commissioner then asked if there any long-term agreement, in case the restaurant changed its mind and decided it wanted to be open at the same time as the market and what would that do to the parking; would the CUP have to be modified. Beth explained that the City has a signed letter from the property owners in support of the CUP and they have been working with the applicant. We haven't heard that there are any issues, and they also support the Thursday evening venue, because they think they will get market customers going into the restaurant.

Beth explained that the two acres to the west can provide enough parking for both the restaurant and the market, but staff's concern is that it be defined enough so people coming to either venue will know where to go. Also, the applicant has demonstrated that she is controlling that to this point.

Commissioner Hadley then asked what would happen if the two acres were developed and Beth indicated that the applicant submitted verification from that property owner that allows her to use it for parking, but if it came to the Commission for development, we would need to look at the impact to the 5-year CUP.

Vice Chairman Griffin pointed out that the Staff Report indicates no outside lighting is needed and the idea of Thursday evening is new, so how will lighting be addressed? Beth indicated her understanding is that it is Thursday evening in the summer from 4:00 p.m. to 7:00 p.m., so she should be able to operate without more exterior lights.

Commissioner Soutenet indicated he didn't have anything to add, except to look at the compatibility of having the market on Thursday while Relics is open and the potential impact on traffic, plus the two acres doesn't have a very obvious traffic flow plan and perhaps that should be defined.

Commissioner Losoff indicated he was initially confused about the Sunday versus Thursday and back and forth with the two locations, but they aren't grouped together; they are separate permits, so one is independent of the other. Beth agreed and explained that the CUP is attached to the property, even though it is the same applicant. The Commissioner then indicated he also had some concerns about Thursday nights, but on the other hand, it might be a good marketing tool for both the market and the restaurant. He doesn't think he has any problems with the parking, unless the undeveloped property is developed.

Commissioner Taylor indicated he has no problems with the project and he agrees with the Chairman's comment about the change in times or days, and if possible, perhaps the City should handle that, so it doesn't come back to the Commission.

**Applicant, Katrin Themlitz, Sedona, AZ:** Indicated that she started working on the project two years ago and the market was conceived in January of 2009, realizing a larger dream of an agricultural renaissance in the Verde Valley that came from groups of people working together. In the second year, they had an average of 35 vendors consisting of Arizona growers and/or value-added food producers plus a small percentage of crafts and relevant non-profit educational vendors.

The main issue is that it is a great community event and weekly gathering place for the community. It is a great way to generate conversations regularly, with the food being the vehicle for topics of sustainability for Sedona's future. She will be working with the Sustainability Commission to help use the venue to focus some of these conversations, because it brings locals together on a regular basis, almost like no other event in Sedona.

They have partnered with a lot of groups, like the Sedona Community Center to use their commercial kitchen, because it is very costly for local producers to rent a community kitchen, and the trade they have worked out works beautifully, as some of the value-added food vendors actually help with the Meals on Wheels program. They have also developed relationships with the local restaurants to see how they can expand, as more local produce is available, to have that go into the local restaurants. There is a great demand from the chefs and a great willingness to work with local farmers, and they are looking to focus that conversation next summer, when they hopefully have a good harvest.

They have also worked with the Yavapai County Master Garden Association in providing education at the market on various topics, such as canning vegetables, cooking with a solar oven, fall planting, landscaping and perennials, how to create soil through "lasagna gardening" without tilling or weeding, etc. There has also been education for solar installation and federal incentives that were available last summer, plus chefs giving cooking demonstrations. Additionally, they co-sponsored the movie, *Food Inc* in 2009, in collaboration with Gardens of Humanity and the Sedona International Film Festival. The movie was about the state of the national food system with a very healing message that the market endorses, which was grow your own garden, support food sources that are kind to humans and animals, use sustainable soil practices and green the planet.

They also started donating excess food to the Sedona Food Bank after the market and they are looking to expand that as more produce becomes available, and they produced a music CD as a benefit to the Food Bank and the Meals on Wheels program. The musicians donated their labor and the market donated the production costs of the CD. They are also working with the Sedona Humane Society on a mobile adoption unit that is included in the site plan close to the restaurant, so it will be out of the way of the market activity. They have had success at other venues, and she hopes to help them in this way as well.

She has also been trying to create more integration between the three towns in the Verde Valley; several of the growers come from Camp Verde. There seems to be some prejudices between the cities and the market has created a better feeling between the areas of the Verde Valley. She also wrote an article on how farmer's markets can address the gaps in our food system, etc., bringing focus to those gaps. They are a (tape unclear) certified market, which means it is a USDA-sponsored program called Farmer's Market Nutrition Program, to bring fresh vegetables to the underserved women, infants and children, and they are qualified to process food stamps, now known as SNAP. Additionally, they are working with the local seeds trust to assist in creating an online education system and local seed saving is one of the foundations of creating a sustainable food system.

Regarding the Relics location, one of the crucial issues in creating an authentic grower's market is to choose the right time, and it has been difficult to make the right choice. You have a letter from one of the Chino Valley farmers who explained why he didn't attend the market last summer, and that helped in understanding some of the regional dynamics in making it work. There are a handful of growers from the regional area of Chino Valley and the Verde Valley, and they go to seven venues. Sedona is sixth in line of the seven and the growers go first to venues where there is a larger population, so it becomes a juggling thing to bring the people here. The larger markets are Prescott and Flagstaff and Sedona can't compete with their populations, so it leaves us the summer weekday. A large part of Sedona's population works from 9:00 a.m. to 5:00 p.m., which eliminates a mid-day event, and the heat is an issue for produce, so that leaves early mornings or evenings to capture the consumer and make it a success for the growers. Thursday is the day, and there were some issues with Friday last year. She interviewed all of the growers and went to all of the markets and Thursday is a good day -- evening is the preferred hour, because of their time for harvesting, etc. There is just a lot of time and physical labor involved in bringing produce to market and the growers have such a demand, they can be picky. From her end, she can provide a well-organized and well-attended venue, so they return, and if she has permission to do Thursday evenings, it would be a great success, because everyone could come.

In terms of the concern about the restaurant traffic coinciding with market traffic, she spoke with Karen DiSalvo to get their average car count. It is crab night for them and people usually book in advance. They have an average of about 20 cars at any given time and the market would be in the early evening and probably finish by 7:30 p.m. or when the sun sets. The property owners welcome the idea, because of the cross-marketing possibilities, and during the day, they would have to pay for extra building security that they wouldn't do in the evening, because they would be open, so it would save them some money. Additionally, the flow of the market

traffic fluctuates. At the grand opening there are a lot of cars -- at least 100 cars, but a week later, there might be 25 cars. They have been operating there and know the flow of the property and she also has a paid assistant in the summer that can direct the traffic.

They also found that it is useful to designate parking spaces for the open vacant lot next to the building. They have two lanes marked by cones and a sign to keep the lane open, which prevents from people being blocked, which happened the first couple of times, so that has been addressed and it has worked. People are now familiar with how to get in and out and that the preferred entrance is the easement access, which also goes behind the restaurant.

In relation to the Tlaquepaque permit, she intends to utilize both properties, but never on the same day and only during peak harvest season. Her intention is to remain a grower's market and not a value-added food market, which becomes more of a boutique farmer's market. She has no interest in that at all. It has been a challenge, because there is not a lot of produce available, but the venue has been a success, so the growers are interested in coming and two local growers are now growing year-around and participating in the winter venue this year.

She will also inform the City and the Police eight weeks in advance of the day and location and of what she is going to do and when, because that is her deadline to have all of the vendors on board and that should be plenty of notice. She may talk with Wendy Lippman about doing an early morning Sunday venue at Tlaquepaque during the summer, with the core venue at Relics, because there is better access for parking, and to make this venue a success, it is very important for it to get as much highway visibility as possible, so the growers will want to come back, and it can capture a lot of traffic that way that it wouldn't otherwise.

#### **Commission's Questions for the Applicant:**

Chairman Gillon asked the applicant to talk about having two banners versus one and Beth pointed out that there is a picture that alerted her that they are using two. Beth explained it is one on each of the tents that goes down the main aisle. Chairman Gillon noted that is as opposed to one on the Relics building.

Katrin indicated they tried to put a larger banner over the Relics sign adjacent to ADOT's right-of-way, but Joe DiSalvo asked them to remove it. There is also a larger sign on the property, on the wall by the easement of the parking lot. It is really a safety issue, because they are trying to get people to slow down before turning in. As far as she remembers, it doesn't exceed the 20 sq. ft. of print they are allowed to have. They have more banners, but they are not putting them out.

Commissioner Soutenet asked what would happen if another organization wanted to have a booth that could potentially be in excess of the 36 allowed; would there be space for that or how would we address that. Is it limited to the 36 spaces or what if the market expands beyond that limit? Katrin indicated that 30 is the magic number of what a town the size of Sedona can afford and for the vendors to do well, but on this property, you could expand to the other side of the well and still have enough parking. She would hate to do that, because she would like to keep the more intimate setting and not split the vendors up, but it would be a possibility to add an additional 10 vendors in the back, if the City approved it.

Chairman Gillon confirmed with staff that as of now the CUP is written for a maximum of 36, so to go above 36 would require an application for . . . Katrin interjected that she thinks it is adequate.

Commissioner Losoff indicated to staff that a lot of time was spent on the Farmer's Market at Tlaquepaque and some time on this one too, and then asked if there are any more in the works, and if so, could they be combined if it is the same applicant. Beth indicated that she is not aware that Katrin is planning to expand to any other property. Katrin indicated that she hoped not to come back for five years.

*The Chairman opened the public comment period at this time.*

**Holly Epright, Sedona, AZ:** Indicated that she is speaking as a resident of Sedona neighboring this particular property and she has some large concerns. Part of her concerns has to do with the communications and part has to do with the actual usage. She has a sense that she is kind of wasting her time, because it seems as if in the presentation that this is a done deal. She has some serious concerns, because the original letter she received stated that they were talking about a Farmer's Market at one period of time and for one length of time,

and then there was another letter that said they wanted it at a different time, and she went online and got the information off of the website, and that made it seem that they were going to be moving the Farmer's Market to Tlaquepaque and this was a temporary use, so a lot of the communications that have gone to the neighbors has been very misleading. Had she known of all of these changes, including Thursday evenings, she probably would have spoken up much sooner with staff or in writing, so she apologizes for any of her confusion, but she was still finding new pieces of information online today.

The other issue is that you are looking at a CUP for such an extended period of time and now she is finding out it is in multiple locations, and she would strongly encourage the Commission to think about a much reduced time, like months or one year. In this particular market and in this economy, you can't know what is going to happen in five years and it distresses her that the Commission would consider doing a CUP on something like this, with this many nebulous pieces, for that length of time.

She is also concerned, because when she got the last set of letters, she also happened to be perusing the Red Rock News on December 15th, and in the garage sale section, there was in bold print "Farmer's Market" and it then said, "Now includes antique dealers every Sunday 11:00 a.m. at Relics. Additional dealers wanted, call 301-9079." Her feeling is that something isn't kosher and she is concerned that this is becoming a retail venue. There also was discussion that they aren't interested in being a value-added market, but there was tax being collected on non-food items and crafts, so her sense is a garage sale, antique dealers, food vendors, community fair and dog adoptions, etc., on a restaurant site, and she has already had major issues with Relics restaurant and how they handle the noise on a week night, so she has some major concerns about this.

As a citizen of the larger community, she also has some concerns about extended amounts of tent sales, farmer's markets and retail sales where people aren't in a storefront, because it makes for an unlevel playing field. If it were strictly produce and for a limited period of time and length of time, then it is something that would be more palatable, but right now, it is beginning to look like something is not 100% out there from either the property owner or whomever.

**Kathy Peake, Sedona, AZ:** Indicated that her biggest problem has been with the stoppage of cars. She comes out of Pinion Drive and helps at Bingo, so she has to get out of her driveway and several times there have been cars at a dead stop in the lane, waiting to get into the Farmer's Market, and people are coming down the hill at a fairly fast rate of speed, so she is worried about accidents; more of those aren't needed on 89A.

*Having no additional requests to speak, the Chairman closed the public comment period.*

#### **Summary Discussion:**

Beth Escobar indicated that regarding Ms. Epright's comments, she is correct that this has been a moving target as far as the days, and she thinks Katrin gave a good explanation as to why she is now focusing on Thursday in trying to provide convenience to the vendors. As a reminder, we do annual inspections for CUPs, so even if the Commission gives them a 5-year Conditional Use Permit, staff is there at least once a year, and because of the location of this venue, we probably will be there more. If they aren't in compliance or we hear of any issues, then their CUP is subject to being revoked. It is not that you give them a 5-year permit and we never look at it again.

As far as the antique dealers, it is correct and she tried to cover in the Staff Report that Relics is selling antiques from their restaurant and it is a permitted use on C-2 property, so when they are open during the market to provide restrooms to the market guests, the guests are welcome to go into the restaurant and view the antiques for sale. It is not really something that affects the CUP, because it is a permitted use for the general commercial zone.

Regarding the traffic, she doesn't know if Engineering has any input, but both Pinion and Juniper intersections probably should be upgraded at some point, because they are difficult for making left and right turns.

Commissioner Taylor asked if the Farmer's Market is strictly produce and related things made from produce like honey. Beth stated that is correct, and it is things like honey and goat cheese, which are taxable items, since they are second sale items. The reason she pointed that out is we have new business license requirements and each vendor that collects sales tax has to report the sale of those items. The Commissioner asked if Relics has to have the

antiques on display inside or if they can be taken outside and Beth explained that unless they are partnering with the Farmer's Market, they have to contain their activities within the building. The Commissioner asked if we are approving them getting together on this and bringing things outside or are we approving just a produce market. Beth indicated we are approving just a produce market, but Relics does have a booth at the Farmer's Market where they prepare some of the produce for sale, but not the antiques.

Katrin stated that she talked with Joe DiSalvo and stressed the importance of keeping whatever he does during the market hours separate from what she does. She allowed them to have a booth outside to prepare and serve dishes related to the Farmer's Market. They serve three dishes and they are supporting the use of local produce in restaurants and want to buy as much as possible. They were operating under a Temporary Use Permit and that gave them a little more leeway. It was a trial period to determine how Relics could benefit from hosting the Farmer's Market, and during the Conditional Use Permit, they aren't allowed to have antiques outside. It doesn't fit the venue and the vendors don't appreciate it, and it dilutes the mission of what they are trying to do. Joe didn't like that too much, but she has set the boundary with him about that, so maybe it needs to be clearer in the marketing and to the public that these are separate events and that he markets his antique show, which happens in the ballroom on Sundays, separately from the Farmer's Market. She is not promoting a Farmer's Market garage antique deal; it doesn't work and it is not something she is interested in doing.

Chairman Gillon indicated that to be really clear, if anybody other than some produce vendor comes to you, you say no. Katrin stated that you have to bring in some diversity, and if it is a handmade product, she has a small percentage, and you have a copy of the rules; two percent of the vendors are not directly farm-related, but still have handmade products, to bring diversity to the market. Other Farmer's Markets in Northern Arizona have the same types of vendors and variety, so they are trying to be consistent with that.

Chairman Gillon asked staff is there is something in the Conditional Use Permit to enforce that, so if there was low produce, we don't end up with a craft market. John O'Brien pointed out that Condition #1 talks about the Farmer's Market shall operate as described in the December 1st, 2010 Revised Letter of Intent, so the applicant submitted a Letter of Intent that described the use and that Condition #1 covers that issue, and that is a standard condition. This use is bound by that Letter of Intent and the site plan, so staff is comfortable with it. If something goes awry and other things are introduced that aren't consistent with that Letter of Intent, the applicant would be in violation of the Conditional Use Permit.

Commissioner Losoff indicated he was also concerned with that ad and he called and got the clarification on it. He might feel more comfortable if there was a specific condition addressing that; we have been back and forth on some of these things, and those are legitimate concerns, so what if there was a specific condition regarding the sale of non-produce items and not just take for granted that it will be covered by #1? Katrin indicated that one of the main rules of the market that applies to produce is that we don't allow reselling of produce. The Commissioner then stated that he was talking about non-produce items, and asked if staff is comfortable with #1. John O'Brien indicated Beth was working on a new condition.

Beth indicated the two percent is based on Katrin's actual application and vetting of the vendors. Beth then read, "Sale of non-produce items will be limited to two percent of the vendors", so if you have 36 booths that would be one. Commissioner Losoff asked about saying nobody, why would we say anybody. The whole process that we have been told with Airport, Tlaquepaque and this location is that it is all produce, and we have specifically said none of this other stuff, so why even allow two percent?

Katrin indicated this is a very challenging area for produce and she doesn't think you could create a Farmer's Market with just that; you have to create a wide variety of interests. She has one jewelry person there that locally produces handmade jewelry; she has one person who hand sews things and she has one person who is going to bring hand-dyed wool. Chairman Gillon pointed out that is 10%.

Commissioner Soutenet indicated that the distinction is between non-produce items and locally produced items, because you are setting the criteria as anything that is locally made, and he is not sure that was part of the original Letter of Intent. We should include that language and that would cover it. Commissioner Losoff indicated that in the past, he has been pretty supportive of this, but he is now having some reservations, because he doesn't think those things should be in a Farmer's Market and we shouldn't be providing another opportunity -- he has a hard

time going on a hike and finding vendors selling T-shirts, and when he goes to a Farmer's Market he expects produce. He doesn't like to have someone try to sell him jewelry, etc., and the premise has always been food and produce, not this other stuff, so he is surprised about this discussion.

John O'Brien indicated that he doesn't think this is any different from what occurred at the airport under the Conditional Use Permit. Commissioner Losoff agreed, but indicated it was changed when they started to go to Tlaquepaque and the Commission was told different things. John O'Brien stated that he knows there were non-produce items at the airport. Katrin explained that she had to refine it for Tlaquepaque, because she has a Non-Compete Agreement with any types of crafts in Tlaquepaque, so there is no jewelry, etc., there. The lady that sells some of the jewelry at the market is also at one of the galleries in Tlaquepaque and it was the general consensus of the merchants not to have the market there as a competitor.

Chairman Gillon indicated that the first thing the Commission needs to know is the proposal before us; two percent is three-fourths of one vendor. Beth Escobar indicated that she thinks she misheard Katrin; it is ten percent and that is what she has now, so Beth indicated that she changed the Condition. A question was if you want to do "locally produced". Katrin indicated they are all locally produced in the Verde Valley and the USDA definition of local is 400 miles, so we can split hairs about that and there are many different opinions about "local".

Commissioner Soutenet indicated that we are trying to clarify what is fresh produce as opposed to locally produced items, and we are not clear if we should include the locally produced non-food items and if those were included in the original Letter of Intent. Beth Escobar stated that she didn't think the Letter of Intent was that specific, but we can make a condition that specific. Katrin stated that the produce varies; there are very few small farmers in Arizona, so she has welcomed some people out of the local region, because it brings more diversity to Sedona. We are shooting ourselves in the foot to exclude people that are producing. Commissioner Soutenet indicated that the words can have a lot of impact and, by extension, you could see the local artists selling their art as well. Katrin stated that she doesn't allow them; it is not a crafts fair and there is one person that she has allowed to be there for different reasons, and she has been a good addition to the market.

John O'Brien indicated that the Condition would allow three; Commissioner Losoff added that any of those three could be an artist. John O'Brien stated that to him, that is not unreasonable and Commissioner Soutenet agreed, but indicated that it needs to be defined. If we look at 10% of the vendors as a maximum, he would be happy with that.

Vice Chairman Griffin agreed and explained that he doesn't want to dictate the success of the market, if it needs some diversity. The success is more important than drawing all of these lines and obviously there aren't too many vegetables growing in Sedona these days. We need that flexibility and to leave it to the Market Manager to bring in fresh produce, and when it is available, we had a condition to give those local growers a priority.

Katrin stated that there are many ways to show them that they are preferred, in terms of their location in the site plan, etc., and she tries to show them that they are preferred and if there are enough local growers to make a market, there is no room for those further away, and that has happened during the summer. The Vice Chairman indicated he is fine with the 10% and he doesn't want to micromanage it; it will be as local as possible, depending on the season. If other Farmer's Markets have that, there is a reason they have some diversity.

Commissioner Hadley asked if the Letter of Intent is part of the Conditions of Approval and John O'Brien stated that is correct. The Commissioner then asked if the Letter of Intent specifies the number of booths, because that is not otherwise in the Conditions and Beth Escobar stated yes. The Commissioner then asked about the hours of operation and Beth explained that is amended by her email dated January 3rd, so that can be added to the Condition. Commissioner Hadley indicated he otherwise agrees with the other comments and the Vice Chairman's point; the free market should dictate much of this.

Chairman Gillon indicated that he wouldn't want to put any limits on the "regionality" of the produce, but he is not so happy about having a 400-mile limit for non-produce items or inviting retail vendors from Phoenix. We need to work on the wording of Condition #2 to say, "Sale of non-produce items is limited to ten percent and they must be regional", and he would propose a definition of regional, such as within the Verde Valley.



Commissioner Losoff indicated that Commissioner Hadley made a good point; he doesn't see the number of booths in the Letter of Intent, and we have been going back and forth. John O'Brien explained that the site plan indicates the maximum number of booths and Beth noted that is specifically cited in the Condition. The Commissioner then stated that this shouldn't have been such a dragged out issue by changing it so much since our work session. John O'Brien agreed and noted that the changes issued tonight didn't help and perhaps it should have been continued for a month, with these late changes.

Chairman Gillon indicated that if it is left as written now, it has to be on Thursdays, so if the pattern of Flagstaff and Prescott changes next year, we have to do this all over again. John O'Brien indicated that is correct and Commissioner Taylor indicated that is not good. John O'Brien clarified that in the January 3rd email, the applicant gave some options and Beth indicated they were Thursday mornings, Thursday evenings or Sunday afternoon. The Chairman repeated if the right day changes next year, we have to do it all over again, and there doesn't seem to be anything about the day that makes us want one versus the other, so we could say it could be one-day-a-week, morning or evening.

The Vice Chairman indicated the issue is that the time of day or the day could make a difference, because of the interaction with Relics, and that would be his only concern. On Thursdays, they don't have events like they do on the weekends. The Chairman then stated that maybe we should just leave it. John O'Brien summarized that we can leave it as it is and then they would have to come back through.

Commissioner Losoff indicated that at first he felt they should be given flexibility, but given all of the last minute changes plus what we heard from a couple of people in the community, if it was to be on a Friday night, he would see a bigger concern, so it may be better to keep it the way it is. Chairman Gillon noted that is the emerging consensus.

Beth indicated that subsequent to the Commission's final discussion, she added, *"including the applicant's email dated January 3, 2011 that lists specific potential days and times"*, so she is restricted to either Thursday mornings, Thursday evenings or Sundays.

Note: Conditions #1 and #2 now read as follows:

1. The Sedona Community Farmer's Market shall operate as described in the December 1, 2010 revised letter of intent and the site plan dated December 14, 2010 and all supporting documents submitted with the conditional use permit application, *including the applicant's email dated January 3, 2011 that lists specific potential days and times*, including the proposed banner to be displayed during each event on the front of the existing restaurant.
2. *Sale of non-produce items will be limited to ten-percent of the vendors and they shall be from the Verde Valley.*

**MOTION:** *Commissioner Hadley moved to approve Case Number CUP2010-8 based on compliance with all ordinance requirements and satisfaction of the Conditional Use Permit findings and applicable Land Development Code requirements and the conditions as outlined in the Staff Report and as revised at the January 4th, 2011 P&Z meeting. Commissioner Taylor seconded the motion. VOTE: Motion carried six (6) for and zero (0) opposed.*

*The Chairman recessed the meeting at 6:35 p.m. to set-up the next presentation and reconvened the meeting at 6:40 p.m.*

- B Conceptual review for Thai Spices, a proposed new 2,188 square-foot restaurant with associated landscaping and parking. The property is zoned C-2 (General Commercial) and located at 1425 W. SR 89A. The property is approximately 0.78 acre. The property is further identified as Assessor's Parcel Numbers 408-26-018B and 408-26-018C. Applicant: Paul Davis. Case Number: DEV2010-3**

**Presentation, Nick Gioello:** Showed the vicinity map and aerial view while identifying the site and surrounding area. He also pointed out the drainage channel that comes from a culvert under the highway and meets another drainage channel at the back and empties toward Willow Way. Nick then summarized the project as presented in the Staff Report prepared for January 4, 2011 and noted that in addition to the building, there is also a small detached refrigerated

cooler building and 24 additional parking spaces, in addition to an outdoor dining patio and a new deceleration lane for access from the highway. Nick then indicated that the existing culvert will become a box culvert and part of the building will cross over that box culvert.

Nick explained that the strengths of the project include the fact that the project meets all of the Land Development Code requirements and no waivers are being requested, plus the deceleration lane will improve the access and safety for the proposed restaurant and the existing automotive repair facility. The applicant is also proposing sustainable practices, including solar panels, recycling bins and solar heat gain with the placement of the building and windows, plus the removal of high-water use invasive volunteer elm trees on the site. There will also be an ADA pathway connection from the sidewalk to the building and staff didn't note any weaknesses with the proposal from that standpoint.

Nick then showed the proposed site plan and pointed out the approximate 30° angle of the building, the outdoor dining patio, the deceleration lane, access, defined parking spaces and detached refrigerator cooler building, in addition to the adjacent Day Spa and their parking area, plus the corner of the Baby Quail Inn. The proposed elevations with stucco building, stone-clad columns and standing seam metal roof were shown, in addition to artist renditions of the building, which also showed the parapet with the mechanical equipment and the location of the solar panels on the roof.

Nick then referenced the introductory work session held on December 2nd and pointed out that the Lot Coverage for this zoning district is 25% and the applicant is proposing 13%. Nick also identified the two parking spaces referenced as a potential connection to the Old Sedona Bar & Grill where the bumper stops could be removed for a temporary connection to the parking area for special events. Staff had encouraged a permanent connection, but the owner of the Old Sedona Bar & Grill wasn't interested. Another issue was concern about the location of the dumpster, and during the applicant's public participation, the owners of the Baby Quail Inn discussed the issue and they have agreed to discuss with the garbage haul company to not pick up early in the morning; other than that, the owners are fine with the location of the dumpster, so he believes that issue has been resolved.

Nick pointed out that no recommendations are being made in this Conceptual Review and he knows there were other issues in the work session, but he will let the applicant's architect answer those issues and explain what has been changed. The updated Letter of Intent has asterisks where changes were made.

#### **Commission's Questions for Staff:**

Commissioner Hadley pointed out that there are no comments in the Staff Report from ADOT and asked if they are okay with the deceleration lane, and if the City should acquire 89A, he presumes the City has no problem with the deceleration lane. Nick indicated that his understanding is that the applicant worked with ADOT about the deceleration lane and they have gotten approval, but the City hasn't heard from ADOT, so at the next level, he will ensure there are comments from ADOT. As to if the City acquired 89A, he would defer that decision to Engineering, because that lane is shorter than the typical deceleration lane, because of issues in trying to extend it to the property to the west, which has half of its parking in that right-of-way. Andy Dickey added that the owner did coordinate with the City Engineering staff on the design of the right turn lane as well.

Commissioner Hadley commented that there is conflict with the Landscape Plan and the architect's site plan, but he appreciates the Landscape Plan, because it is well done and he is sure they will be coordinated at the next step; however, he didn't see any provisions for bicycle stalls and wondered if that could be added somewhere within the project.

Commissioner Soutenet indicated that the applicant is proposing to have a drainage easement or the City has asked for one to be created and asked how that would work, the size of the easement and what impact there would be on the building footprint. Andy Dickey explained

that the size of the easement hasn't been set and will be worked out with the designer and the owner. It will have to be adequate to handle the facility, maintain it and possibly replace it someday. The easement we are proposing would be dedicated to the City, so the City would maintain the easement, because this is a fairly major drainage downstream that the City has potentially wanted to maintain, and the owner has agreed to dedicate that to the City. How that affects the building would be that the footing on the building would need to span the pipe underneath and it wouldn't be allowed to put any surcharging pressure on the pipe. The easement will be dedicated as a subsurface easement, so the footing will have to span . . . The Commissioner then interjected that it is then at the discretion of the City to establish the size of the easement and Andy stated yes. The Commissioner then asked if there has been any engineering study as to the size of the culvert and Andy explained that they have looked at some preliminary drainage analysis, but he hasn't seen any kind of storm drain yet. Nick then pointed out that at Conceptual Review, we don't require the Grading and Drainage Report; it will come at the next level.

Commissioner Taylor indicated that given the drainage goes under the building, the requirements should be determined before we deal with the building, because it could be prohibitive. Chairman Gillon explained that before the Design Review that has to be worked out and the Commission will see those specifics. We are just getting an overview of this project. Commissioner Soutenet explained that he was only trying to see how much impact the easement or culvert could have on the outcome of the project and building location, etc., and how that could be rearranged.

**Designer and Project Manager, Allen Oyakawa, Az MediaOne Design, Sedona, AZ:** Explained that there has been a preliminary drainage report and culvert sizing done by Shephard-Wesnitzer and they will be updating that for the size and flow when they come in for their final approval. It has been preliminarily approved, and they are basing it on that preliminary size.

Mr. Oyakawa indicated that in response to the question about bicycle stalls, they will be placed between the area near the front patio and the street, and also in the far top left-hand corner, there is a motorcycle and a bicycle stall. He believes the deceleration lane has been reviewed and approved by ADOT based on the first drawing and the drainage easement will be determined at the next level of review.

Commissioner Losoff asked about the days and hours of operation and Mr. Oyakawa indicated that the owner could respond to that question.

**Owner, Pearl Pardee, Sedona, AZ:** Indicated that she has been the owner of Thai Spices for 20 years and the hours of operation for the new location will be the same, 11:00 a.m. to 9:00 p.m. They are open for lunch and dinner six days a week.

Commissioner Losoff then stated that it appears that we are removing 60% of the trees and asked if staff is satisfied with that. Nick explained that the volunteer elm trees are more invasive and aren't encouraged. The Code allows for the removal of trees for any improvements to the building and with the additional things they have to plant, staff is pretty satisfied that it will be adequate; however, there is one nice specimen tree in the middle of where the building is that has to go. The Commissioner then asked about the arrangements for deliveries and the dumpster and Mr. Oyakawa indicated that the business at the back of the property has an early morning pick-up and it is just an issue of getting somebody that can come at a reasonable time, so the issue was just to find the vendor. The Commissioner asked if that is a handshake agreement or a contract, etc., and Mr. Oyakawa indicated that it was just discussed. The tenant in the back has the right to choose his own vendor, so it has to be a consideration on his part, but for the new facility, that is not an issue. The Commissioner then asked if the location for deliveries will be big enough and Mr. Oyakawa stated yes, and they will have signs on the last two stalls to say no parking before 11:00 a.m. to accommodate large deliveries before 11:00 a.m. Commissioner Losoff indicated that the space between the corner

of the building and the parking lot is very narrow and asked if that meets regulations. Mr. Oyakawa indicated that it is all to scale; it looks tight because the corner of the adjacent Day Spa is almost on the line and part of the parking lot and their sign is on the proposed site. The Commissioner asked if in the final design, they will see that it is in compliance and Nick clarified that it is. Mr. Oyakawa added that the large tree in the middle of the building location also makes that site look confined. The Commissioner then indicated that other than that, conceptually, it is going to improve the appearance of the area and will look pretty nice considering what is there now. Mr. Oyakawa added that he also thinks it will make that part of town more walkable and pedestrian-friendly.

Commissioner Taylor indicated that he has quite a few problems with the project. The building is nice and well-designed, but not on this piece of property. It is not in the context of the street and should relate to the street as the other buildings do. It doesn't mean that it has to be turned at right angles, but somehow it has to turn the corner from the adjoining building -- not look like the adjoining building, but turn the corner. This area is a FAC in the Community Plan and it is supposed to be a special development, so everything should bring it together from the market across the street to this side of the street. As it stands, he is not supportive of the design and there are a number of things that could improve the building. The cooler in back should be attached to the building by a roof or walls, etc., to make it part of the restaurant building, so it isn't an out building as it is now. Regarding the parking spaces and service to the building, he still feels that something should be rearranged so that drive behind the building to the west could continue into this lot. He doesn't know the name of the street to the west, but the buildings that face 89A to the west of that street also have an alley behind them, and it would be helpful if service vehicles could come through that alley as far as possible to service all of the buildings. He doesn't know what that would take, because it is all private property, but that is something to look at. He also wonders how the garage building at the back of the lot is serviced if an order comes in a 50 ft. truck; he doesn't see how they would turn around back there, and he thinks there is a real point of congestion where the angled parking meets the main drive. With a limited space between the garage building and the row of parked cars, it almost seems that some arrangement must be made with the restaurant to the east. Additionally, the plan in the packet is a little different where the access road comes out to the street; it shows like a half-parking stall for a motorcycle and he wondered if the City approved that. The 24 parking spaces have to be full spaces, so it seems that this plan is a little different. It also isn't clear, because the new sidewalk and deceleration lane is lightly drawn, plus the scale says one inch to twenty feet and this isn't to that scale -- it has been altered in printing, so how close is the handicap walkway to the ramp, relative to the vehicle entrance? It shouldn't be too close to the entrance -- it might be alright, but he is not sure. The Commissioner also asked how the plan handles removable wheel stops; they are usually concrete and pretty heavy and he is doubtful that anybody is ever going to move them. About a year ago, we also had a big discussion about stone on the columns and that if the stone looks load bearing, the columns need to be pretty fat and these look pretty skinny. There is also a written comment in the material about flood control requirements, so does the project comply as it is now? It is lower than the road and he assumed that is talking about the entire property flooding.

Andy Dickey explained that the finished floor of the building has been set one foot above the base flood elevation, so it meets the flood control requirements, and they will have to do a certification of no rise on the floodplain and certify that the finished floor is at the designed elevation. The Commissioner then summarized that the appearance of the building relative to the next building and the street needs to be further considered and there is a traffic problem on the site.

Commissioner Soutenet indicated that he had addressed a few points related to drainage in the initial meeting and he didn't see that they have been addressed. In the Design Review Manual, 2.3.1, it states that the use of concrete channelization for drainages requiring mechanical stabilization is strongly discouraged and on that point alone, he believes that "strongly discouraged" means not acceptable, so he is not sure how that can be handled, and that combined with the orientation of the building, which is not exactly in conformity with the

frontage of 89A, and the fact that trees and existing vegetation could be maintained would warrant looking at tilting the building, accommodating the same facility without compromising the drainage, etc.

Mr. Oyakawa explained that the building is oriented to take advantage of early morning solar gain and the solar panels are on the southeast facing part of the building. It was also oriented to not create a back-to-back alley between the two buildings, and if they rotated the building and pushed it to the property line, there is currently a walkway there and it would just be a dark alley. Also, it is to create some architectural aesthetics and not be a row of buildings in a line, by creating the triangle to the northeastern part to create the patio as part of the entrance. If it was rotated, the patio would be along side of the driveway. As it is now, they created that entrance space and there is some discussion about the back lower triangle on the northwest part being another garden area for planting and a water feature, and that couldn't be accommodated if they rotated the building, plus they would lose a lot of their solar benefit. Additionally, it would put the back of the building toward the street and if they used the solar panels rotated clockwise, the back-end slope of the roof would face the street. Regarding the back driveway issue of connecting to the existing back parking lot on the lot to the west, it would eliminate that whole row of parking to accommodate that connection and it is at the minimum allowable. The Code allows one stall to be four feet wide -- one motorcycle stall and one compact stall, which is number #12, is allowed and they do count as parking stalls.

Commissioner Soutenet asked if he had looked at turning the orientation counter-clockwise; he never meant clockwise for the patio to face the parking, but for the patio to face the road, which would also address the concern about the solar orientation. He is not saying to have it parallel, but maybe 10° to 15° off at the most, to maintain the architectural originality.

Vice Chairman Griffin indicated that there are certain things to struggle with and one is the enforcement of the ADA access from the sidewalk. With a property that is only 2½ ft. or 3 ft. below the street, we are forced to create a lot of ramps and existing sidewalks, when you look at what is there, so there certainly are some challenges with that access. Regarding the orientation, it mentions that you want to get the maximum daylight solar exposure in the afternoon, but the solar panels are on the southeast side of the property. Mr. Oyakawa identified the locations of the panels and indicated that if turned clockwise, it would turn the solar panels toward the east and they would lose that exposure. The Vice Chairman indicated those are things that need to be worked out, but your argument was that it was needed for afternoon exposure; however, the southeast exposure is morning exposure. We are debating the positioning of the building with the skewed angle for architectural aesthetics -- the building has a lot of great character; however, if you square the building to the street with the patio in the front, it is compatible with all of the neighbors and every building along the highway faces the highway for that reason. You say there is no restriction in the current Sedona Design Review Guidelines on a building oriented at an angle, but all of the buildings are parallel to it and a good example of a front patio is Pizza Picasso. If you take the width of the building and turn it sideways, you aren't covering part of the wash, but he doesn't know if the ADA access with such a small slope is doable; you indicated that 24 ft. of ramp is needed to get that. The Vice Chairman then asked if the access from the highway to the restaurant was the architect's idea or staff's.

Mr. Oyakawa explained that there are two issues -- getting down from the highway and getting up to the ADA stall. The Vice Chairman agreed that it is the design nightmare of having the ADA parking on the other side. Mr. Oyakawa explained that is the highest side of the lot that gives him the closest to the finished floor elevation and it is still a nightmare. The Vice Chairman indicated that he has had discussions with staff and it is something we need to look at, because the requirements are going to dictate some design issues and we can debate if they are all requirements we have to enforce. Mr. Oyakawa pointed out that you have to have a rocket-propelled wheelchair at the Kentucky Fried Chicken to get from the street. The Vice Chairman indicated that there just seems to be some design problems with this, understanding that you have ramps going up and down, because you have to meet the ADA requirement on

the parking; however, he thinks there are some issues that warrant looking at some other options. Mr. Oyakawa pointed out that the down ramp from the sidewalk to the building is also a drainage diversion to get the water out and away from the buildings. The Vice Chairman asked if there is already a retaining wall there and Mr. Oyakawa indicated yes. Vice Chairman Griffin then stated that could be taken care of with drainage and Mr. Oyakawa agreed, but explained that when you pipe into that with a walkway, it becomes a floodway. The Vice Chairman indicated that he sympathizes in trying to make this work, but it needs to have a different option to turn things a little bit. The building itself has a lot of character and it doesn't need to be turned on its edge.

Commissioner Hadley indicated he respectfully disagrees with his fellow Commissioners; he likes the way it is oriented and that it is not in line with everything else on 89A; instead of presenting one elevation to the street, it presents two and it has the potential of creating a lot of interest. The drainage, parking and access issues aside, he is very supportive of it.

Chairman Gillon indicated that the Staff Report says rusted metal roofs, but the pictures seem to show painted metal roofs. Nick indicated that is his error; it is a painted standing seam metal roof. The Chairman asked if staff wanted to respond to any of the discussion and John O'Brien indicated no, the purpose is to identify the issues for the applicant and the architect, so they can try to address those or present the rationale for why they can't be addressed. He is hearing that four (the majority) of the Commission feel that the orientation of the building to the highway needs to be changed; Commissioner Hadley disagreed, but he is hearing four out of six Commissioners. Commissioner Losoff stated that he likes it the way it is. John O'Brien stated it would be three Commissioners that didn't like the orientation, two are okay with it and the Chairman didn't weigh-in on that. Chairman Gillon indicated he is okay either way, and John O'Brien noted that the applicant needs to figure out how to address the Commission's concerns.

Commissioner Taylor indicated that he is not saying to turn the building; there are architectural ways to make a crooked building relate to the straight street. John O'Brien asked what his suggestions would be and Commissioner Taylor indicated that you can sometimes do it by extending walls out -- maybe there is some way to also address the building next door that presents an end elevation that the designer has to deal with that is difficult, especially that 10 ft. wide front piece, but there may be some way to put a wall on their property. John O'Brien suggested that it may be better not to get into all of the details tonight and Commissioner Taylor added to have a building that is angled, but addresses the need at that corner.

John O'Brien indicated that he is hearing a mixed bag of comments and that will be fairly difficult for the applicant, but he doesn't think the intention tonight is to have it redesigned. The applicant will go over those comments with staff and present a plan that addresses the majority of those comments.

*The Chairman opened the public comment period at this time and called Charles Von Block to the podium; however, the applicant's architect indicated that Mr. Von Block had left. Having no additional requests to speak, the Chairman then closed the public comment period.*

Commissioner Losoff indicated that as a Commission it seems like we are neither for nor against and we put the applicant in a difficult situation; he doesn't know if we have a consensus. The applicant may want to play with a different design or angle, but there isn't a strong opinion one way or the other. John O'Brien agreed and indicated that the applicant will have to look at the Design Review Manual and try to address as many issues as possible. Vice Chairman Griffin pointed out there were other issues brought up and those need to be addressed in other ways, such as not covering as much of the wash, and he has never heard of an agreement with a waste company that dictates their hours, so there possibly should be a consideration of having the dumpster on the other side, and those other issues may affect whether or not that angle works. John O'Brien indicated that he has taken notes and staff will

have the minutes, and Commissioner Soutenet mentioned the covering of the drainage and the vegetation removal, in addition to Commissioner Taylor's list as well.

*No legal action was taken and the Chairman recessed the meeting at 7:35 p.m. for the tape to be changed and reconvened the meeting at 7:40 p.m.*

**6. Discussion regarding draft amendments to the Land Development Code in response to passage of Proposition 203 – Arizona Medical Marijuana Act. (45 minutes 7:15 – 8:00)**

Mike Raber explained that by the end of March, the Arizona Department of Health Services has to adopt a regulatory system for the distribution of Marijuana for medical use and that includes a system for registering qualifying patients, caregivers and dispensaries. The Medical Marijuana Act places an initial limit of one non-profit dispensary for every 10 pharmacies statewide, so that means approximately 125 initially statewide and each county is allowed to have at least one dispensary.

Mike indicated that although the act states that dispensaries and their cultivation sites can't be within 500 ft. of a school, it gives the cities, towns and counties the authority to enact reasonable zoning regulations, and they have until the end of March to enact those regulations before the Department of Health Services starts issuing permits. The City of Sedona must adopt those regulations by the end of February in order for them to be in effect by the end of March.

On December 17th, the Department of Health Services put out an informal draft of their Medical Marijuana Program and it is taking comments through the end of this week, and then that will be refined into another draft that will come out the end of this month. Staff has been reviewing draft and adopted ordinances from several Arizona cities and a template from the League of Cities and Towns, plus the Department of Health Services Program.

The packet includes a draft ordinance with comments and one without comments, and in drafting this we tried to keep things simple and be consistent with the Proposition. In our comments, we cited appropriate sections from Prop 203 and we have some notations where other cities and towns may have included items. Our Ordinance consists of a new Section 919 in the Land Development Code that is basically broken into these segments -- Applications Requirements, Dispensaries and Cultivation Sites to be in Permanent Buildings, Dispensaries and Cultivation Sites to be at least 500 ft. from Schools, Park/Recreation Facilities, Churches, Day Care Facilities, Libraries and Youth/Teen Centers. We tried to stay consistent with the intent of the legislation on the 500 ft. separation from schools, in that these tend to be places with large numbers of children.

Article 6 of the Land Development Code would also be changed to allow dispensaries and their cultivation sites in C-1, C-2 and C-3 zones as allowable uses. Approximately 53% of the commercial property and 42% of the commercial acreage would be eligible for a dispensary, but we don't know how many dispensaries might be permitted in this area by the Department of Health Services, if any. Mike then showed a map identifying the areas outside of the radii drawn around the uses listed, such as the schools and churches, so the white areas would be eligible for a potential dispensary based on the land uses we were able to determine, but this is a draft. Mike then identified the location of the schools, etc., on the map and the 500 ft. boundary around them. Red identified the schools, yellow identified the churches, green identified the parks and by their measurements there is one tier of lots in AAA that would be eligible. There also is one day care facility that is close to the commercial area on Deer Trail, but we didn't include churches, etc., that weren't in close proximity to the commercial area.

Mike referenced page 4 of the draft with the comments and indicated some topical areas were noted that may still need to be addressed, and on pages 4 and 5, there are other ordinance provisions from other cities that staff is not recommending, and there may be some other items to address after looking at the draft Department of Health Services regulations. One thing is that it is not clear if we need to regulate caregiver cultivation locations. Several other ordinances regulate it and it is clear that a qualifying patient cannot grow their own Marijuana if they live within 25 miles of

a dispensary, but it isn't clear whether or not the same thing applies to a caregiver. The statute says that we can regulate dispensaries, but nothing about regulating caregivers or patients.

Mike indicated that another area is infusion, which refers to cooking or blending Marijuana into consumable edible goods, and we probably should include it in the Definition section. Flagstaff is requiring infusion to be within a dispensary; however, the draft regulations by the Department of Health Services refer to food products prepared under contract with a dispensary at a facility that has a food establishment permit, so it seems that they are acknowledging that there may be off-site blending of Marijuana into food, so we may need to figure out how to include that.

A few other items on page 4 were noted in the draft and one is vending machines. We had a comment on this submitted Cameron Carter. The concern is that we shouldn't prohibit those inside a dispensary and that is the gist of the letter provided to you. Staff doesn't think this is something we need to address and they indicated in the letter that they have been talking with Mesa to make it clear in their ordinance, but that is probably something that the Department of Health Services will have more to do with than we will.

The statute also says that the dispensary must be in compliance with local zoning restrictions before receiving a registration certificate, and the draft Department of Health Services regulations note that a Certificate of Occupancy or other documentation issued by the local jurisdiction that authorizes occupancy is required, so we may need to review how that works, because they want something authorizing occupancy of the building from us before they will issue a certificate. Their draft also further defines an enclosed facility for cultivation as a building, room, closet or area with solid 12 ft walls and a cage-type top, so we may need to refine our draft based on that.

As far as next steps, we will have a work session on January 13th in preparation for the January 18th public hearing with the Commission and February 8th will be with the City Council for possible adoption plus February 22nd, if needed.

Regarding the Department of Health Services schedule, Kathy Levin indicated that the draft rules came out on December 17th and they are open for public comment electronically on the ADHS website until Friday, January 7th. They will post their official draft rules on January 31st and between January 31st and February 18th, they will invite more public comment. During the week of February 14th, for four days, they will hold public meetings throughout the state and the closest one will be in Flagstaff on Monday, February 14th. Their final rules that will be used to implement the Act are expected on March 28th, and beginning in April, the agency will accept applications.

#### **Commission's Questions for Staff:**

Chairman Gillon asked if we won't have ADHS's final rules until after we have potentially adopted an ordinance and Mike indicated that seems to be the way it is going to go. The Chairman then asked if the rules about whether or not dispensaries can be in the same place as the cultivation sites only apply within the City, so somebody could have a cultivation site outside of the City and a dispensary within the City and we would have no control over that. Mike indicated that is true and it is possible that would occur. The Chairman stated that it then would also be possible that somebody would want to put a cultivation site within the City although there is no dispensary. Mike explained that in this ordinance, staff has put that there is a linkage between a dispensary and a cultivation site within the City and at least Flagstaff has done the same thing and tied those two things together. There is some discussion as to whether or not multiple cultivation sites could serve a dispensary. The Chairman stated that if there is such a thing, the cultivation site can be in Sedona and Mike explained that the way the ordinance is written now it would be a one-for-one relationship.

The Chairman then stated that it appeared that Mesa's concern with the vending machines was the hours of operation and asked if we don't have that concern. Kathy Levin stated that it was about being on the outside of the building; however, the Chairman indicated they seemed to be okay with it being inside of the building, because it controlled the hours of operation, and you are saying that



we don't need to deal with vending machines, so we are okay if they put one outside and it is a 24-hour operation. Mike explained that because of the way the regulation is written, they will have to be inside and it seems that ADHS is regulating that, but that is something we can look into. John O'Brien added that if that is a concern of the Commission, staff can put some language in the ordinance that prohibits outside vending machines. Chairman Gillon indicated that would make sense -- we don't want them outside.

Chairman Gillon asked if it is reflexive with respect to churches, schools and day care centers, etc., meaning once we get a dispensary, we won't allow them to locate within 500 ft. of the dispensary, and if so, we have some ordinance work to do. John O'Brien indicated that he didn't think we could prohibit that, but that might be something we can discuss with the legal staff. The Chairman indicated that the purpose is to protect children, so why wouldn't we protect them if the dispensary comes first.

Ron Ramsey explained that the permits that will be issued by ADHS are for one year and if conditions change and that dispensary is now faced with a church 275 ft. away, he doesn't think it will qualify with ADHS, at least with respect to the schools. Chairman Gillon indicated that scenario is contemplating that somebody puts the investment into a dispensary, and then somebody puts a church down the street and the next year they would have to move their business. Ron explained that he can't speak for ADHS; he is just saying that they do an annual review.

Vice Chairman Griffin asked if a school could go in and function before . . . the timing would be tricky. Chairman Gillon indicated that Sedona could deal with it in the ordinance if it chooses to, as he presumes there is nothing to prevent an opposite condition on churches, etc. to say they have to be 500 ft. from dispensaries. John O'Brien indicated staff would have to look at the Zoning Code, because there would be a lot of other sections to change and that might be something we deal with later, but not before the February date.

The Chairman then referenced #5 on page 2 and asked if 50 ft. is supposed to be 500 ft. Mike explained that is 50 ft; we are saying that if it is more than 50 ft., the map will be enough to make a determination, but if it is within 50 ft., we will need a survey, so we are assured the distance is correct.

Commissioner Taylor asked for the definition of a caregiver and Mike read from the legislation, "A person who is at least 21 years of age, has agreed to assist with the patient's medical use of Marijuana, has not been convicted of an excluded felony offense, assists no more than five qualifying patients with the medical use of Marijuana, may receive reimbursement for actual costs incurred in assisting a registered qualifying patient's medical use of Marijuana, if the registered designated caregiver is connected to the registered qualifying patient through the department's registration process. The designated caregiver may not be paid any fee or compensation for his service as a caregiver. Payment for costs under this subdivision shall not constitute an offense under Title 13, Chapter 34, etc."

Commissioner Taylor indicated that since we are developing a new Community Plan and looking at the town coming up with a real town center, and the Community Center is the only thing left that could be a key thing in a town center, we should restrict any of these facilities from a FAC, especially the one at Coffee Pot Drive. We also have to consider that this legislation passed by a narrow margin and there is a considerable number of people that are against this and will be upset by it. Additionally, he is not sure how they are going to stop malpractice or giving out prescriptions for Marijuana when not really needed and the forging of prescriptions. We have an influx of tourists, so anybody who proposes to put this business in town would be counting on a lot of trade that isn't on the books and we may be looking at a bigger business than one might think would occur. He is suggesting that no facility be allowed in a FAC, at least while we are putting together a new Community Plan, and the Community Center should be one of the facilities that the dispensary has to be 500 ft. away from. It qualifies just as much as some of the other facilities on that list. Additionally, given the feelings of some people, he would say this is a dispensary and not a store, so there should be no display windows and no lighted signs, and the hours could be limited, and he

would suggest 8:00 a.m. to 6:00 p.m. and not well into the night or for 24 hours, because this facility is a facility that you might find in a hospital. We talk about C-1, C-2 and C-3, and those zones that most often face onto 89A also face onto the side streets and some of them are residential, and one of these facilities shouldn't be allowed to go in next to a house. It should be some distance from a house, because while someone might not object to a gas station being next to their home, a bar or liquor store or a dispensary is a different matter.

Commissioner Losoff indicated that we are coming up with something that may be changed a month later by the state and asked if the timetable should be reversed. Mike explained that we have to do something in February. The Commissioner then indicated that he agrees that the cultivation and dispensing should have a direct relationship and signs should be regulated, so there is uniform language. There should be a business license and he agrees with vending machines as long as they are inside, but he is curious; if he is 20 or 18 and takes his parent's card, could he access the vending machine? Currently, if you do that for a prescription, you have to show an ID, so you can't do it that easily without written permission from your parent. In terms of restricting sale of paraphernalia, he thinks we should start with a restricted sale of paraphernalia. The hours of operation are important for security reasons; it shouldn't be open 24 hours, and he is ambivalent on drive-thru services, but for security reasons, he is not sure we should restrict drive-thru only for the first year or two. Staff has answered the rest of the questions and he doesn't have any issues with the draft ordinance. The Commissioner then pointed out that on page 3, it says, "Provide for proper disposal of Marijuana remnants or byproducts" and asked what "proper disposal" is. Mike explained that the point was not to put them in the regular trash, but it might be worthwhile to find out what that would be. Commissioner Losoff indicated that in his medical background there was an issue for years on proper disposal. Mike indicated the state may have clarified it and provided a means for that.

John O'Brien asked for clarification on what Commissioner Losoff stated about drive-thru services and Commissioner Losoff indicated that for reasons of security, he guesses he would not be in favor of drive-thru services.

Commissioner Soutenet indicated that a point to clarify is the type of security required on the building, and he isn't sure that will be specified in the ADHS regulations. Mike indicated that it is defined pretty well in the draft and we can get that information to the Commissioners in the next packet. Chairman Gillon suggested that staff send them the whole thing. Commissioner Soutenet indicated his main point has to do with the mandate per the Act to enact reasonable zoning regulations that limit the use of land to specified areas, and what the proposal shows seems to go way beyond that scope. The Commissioner then asked if we are over-regulating and going beyond the mandate. If we only restrict what we are going to put in the Code to zoning and location in relation to churches and schools, etc., he can understand that, but there are lots of areas that seem to go beyond that, and it creates the question of can we even regulate whether or not the dispensary and cultivation site are separate. Mike explained that many cities and towns are creating separate zones for those two different uses; we have taken the approach that a dispensary and cultivation site can be on the same site, because the statute seems to say that. They can be on separate sites, but we aren't trying to isolate them with different zoning districts. We are allowing a lot of commercial area latitude in this ordinance compared to some cities and towns. We have tried to align it with where you would put a pharmacy. Commissioner Soutenet stated that he has no problem with the zoning aspect of the proposal, but he has an issue with churches being mentioned. It appears to give a moral judgment that isn't necessary, and he understands that all of the others listed address children directly, but he doesn't see how putting churches on the list does that, so he would generally say that less regulation would be better, especially since a lot of definitions will come from ADHS.

John O'Brien asked if Commissioner Soutenet is saying that churches shouldn't be included in that list and the Commissioner stated that personally he wouldn't. The fact that the Act mentions schools, by default, you would include all of the areas where children are and he would agree with that.

Vice Chairman Griffin asked about enforcement; some of this will be handled by the state, but what will the City have to enforce. We will inspect the buildings, but what will the City have to enforce? Mike indicated that ADHS is doing on-site inspections too and a lot of these are likely to be Tenant Occupancy approvals rather than Development Review, because existing buildings may be utilized. Vice Chairman Griffin agreed that with a one-year permit, he couldn't see anybody constructing a building. Mike pointed out that there are some pretty significant modifications required.

John O'Brien indicated that our Code enforcement is going to be what is in our Zoning Code; we won't be enforcing the state's requirements; however, Chairman Gillon pointed out that if they are giving Marijuana to teenagers, the Police Department will respond and John O'Brien agreed and clarified that he was referring to Community Development's Code enforcement.

Commissioner Hadley indicated there was a question about the maximum floor area and asked if the Act requires that it be a single-entry facility and Mike stated yes. The Commissioner then explained that by Building Code that limits it to 3,000 sq. ft. Mike indicated there has been some correspondence that talked about that and Commissioner Hadley indicated that if a business is over 3,000 sq. ft., it has to have two exits. Mike added that there has been some discussion about possibly having an emergency exit and one that is secured, so he isn't sure. The Commissioner indicated that the Code would make that pretty clear; if it can only have one, then that limits its size.

Chairman Gillon indicated that he agreed with Commissioner Soutenet about the churches. Commissioner Taylor stated that he disagrees on the churches; that is kind of pushing it in people's faces. He agrees as far as what the church should be about and that it shouldn't really be bothersome, but it is to a substantial body of people and we should honor their feelings. John O'Brien asked for more feedback on that from the Commission and Chairman Gillon stated that the people of the State of Arizona has recognized this as a legitimate business and repeated his opinion that he doesn't see the reason for churches. It is going to offend some people no matter where it goes.

Commissioner Losoff stated that churches could be excluded, but on the other hand, we didn't discuss Farmer's Markets. Commissioner Hadley pointed out that children go to church; however, the Chairman also stated that children go to the supermarket, etc. Commissioner Hadley added that children go everywhere, so he doesn't know. Chairman Gillon stated that there is no reason to expect concentrations of children in churches and Vice Chairman Griffin stated that he didn't have a problem eliminating it.

Mike Raber asked if Commissioner Taylor understood that the Act does not allow dispensaries to dispense to out-of-state patients and Commissioner Taylor stated that he didn't. Commissioner Losoff added that the doctor also has to have a relationship with the patient for a period of time before prescribing Marijuana. Mike then explained that there is also a rationale for not putting a buffer between a potential dispensary and a residential zone. If we did that, it would exclude almost all of our commercial area, because we have a strip commercial orientation, and it would have to be a very small buffer. Also, keep in mind that it is very unlikely that we will get more than one or two of these, because there are only 125 statewide, so we probably don't need to draft an ordinance for a worst case scenario of one on every corner.

*The Chairman opened the public comment period.*

**Cameron Carter, Rose Law Group, Scottsdale, AZ:** Indicated that he represents a firm called Prescription Vending Machines, Inc. that has designed and patented a vending machine for use to make medical Marijuana products available to patients. They sent a comment letter with a fact sheet on those machines telling about those. The one item that concerned them on the draft amendments was a possible restriction against vending machines in general and Mesa had included that prohibition. They worked with Mesa's staff to address the concern that a machine located outside of a dispensary, which he doesn't think would comply with ADHS rules, could be used to circumvent the hours of operation and wouldn't be secure, and possibly lead to people trying to break into them as they do ATM machines. Prescription Vending Machines doesn't

propose that at all; they would require that their machines be used inside of a compliant dispensary facility.

Regarding the identification and whether or not a minor could come in with a parent's ID card to obtain medical Marijuana products, that is not possible with these machines. They are more secure and not subject to fraud or things that a person behind a counter might do. The machines require that upon a patient's first visit, they show their state-issued ID card with the certificate that designates them as a medical Marijuana patient, and they register with the dispensary with the machine to obtain a second card to use with the machine. It is a swipe card that identifies them and they include a biometric thumbprint, so on subsequent visits, they would have to show the state-issued ID to the dispensary agent, swipe their ID card for the machine, and put down a thumbprint, so there are multiple layers of security in addition to what is already required by ADHS.

As far as the hours of operation, their firm has been working on a number of zoning ordinances in cities and the busiest times for these types of facilities are generally the after-work hours from 5:00 p.m. to 8:00 p.m. or 5:00 p.m. to 7:00 p.m., when people stop at the dispensary to obtain the products. As far as the PVM machines, they would only be located indoors in an already compliant building, and it sounds like there would be no issue with a vending machine indoors. They support a prohibition against outdoor machines, because he doesn't think they would comply with ADHS's rules.

Vice Chairman Griffin asked how the machines are stocked and Mr. Carter explained that the machine would be licensed or purchased by a dispensary owner; it is really a way of doing business for the dispensary, so they would have control over the machine and for stocking it. They would obtain the medical Marijuana products from their designated cultivation facility, and then stock the machine, but all products would be kept inside the machine in releasable amounts. The Vice Chairman indicated that it might even be more secure, as far as being distributed, than by someone working behind the counter. Mr. Carter agreed and explained that is the other benefit of these machines; it is automated and tied into a computer system to track inventory and each transaction, so the dispensary owner has a way to ensure there is no product going out the back door or that not too much is being given to any one patient. It is 2½ ounces every two weeks and they can only obtain products in those time intervals.

*Having no other requests to speak, the public comment period was closed.*

#### **Summary Discussion:**

Commissioner Losoff indicated that staff has done a pretty good job of summarizing everything.

*No legal action was taken.*

#### **7 Discussion/possible action regarding future meeting dates and agenda items: (10 minutes 8:00 - 8:10)**

<b>Thursday, January 13, 2011</b>	<b>– 3:30 p.m. – Worksession</b>
<b>Tuesday, January 18, 2011</b>	<b>– 5:30 p.m. – Regular</b>
<b>Thursday, January 27, 2011</b>	<b>– 3:30 p.m. – Worksession</b>
<b>Tuesday, February 1, 2011</b>	<b>– 5:30 p.m. – Regular</b>

John O'Brien indicated that January 13th is a work session and medical Marijuana will be on that agenda and the 18th will be the public hearing on that item, as well as the Time Extension criteria for formal action. He is not sure that a work session is needed on January 27th; the Capital Improvement Program will be brought to the Commission on February 1st or February 15th; if that is ready on February 1st, we might have a work session on the 27th, if the Commission thinks two reviews of that program is needed. There are no current planning items on February 1st.

Chairman Gillon asked if the CIP is the only agenda item on February 1st and John O'Brien indicated yes. Chairman Gillon indicated the work session on January 27th could be canceled now. Vice Chairman Griffin asked if the Commission could have a presentation on the turnback on 89A

and John O'Brien indicated staff could present a PowerPoint presentation at the January 18th meeting and the Commission's comments could be passed along to the City Council. There will then be three items on the 18th.

Chairman Gillon indicated he would not be present January 14th - February 8th and Vice Chairman Griffin stated that he would not be available on the 13th.

**8. Adjournment (8:10 pm)**

Chairman Gillon called for adjournment at 8:30 p.m., without objection.

I certify that the above is a true and correct summary of the meeting of the Planning & Zoning Commission held on January 4, 2011.

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Donna A. S. Puckett, *Recording Secretary*

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Date